

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN H. MITCHELL,
Petitioner,

v.

ROBERT FOX, Warden,
Respondent.

Case No. [18-cv-01246-DMR](#) (PR)

ORDER OF TRANSFER

Petitioner, a prisoner incarcerated at the California Medical Facility, has filed this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the validity of his conviction obtained in the San Joaquin County Superior Court. Dkt. 1. He has neither paid the filing fee nor filed an *in forma pauperis* application.

On February 26, 2018, the Clerk of the Court informed Petitioner that this action has been assigned to the undersigned Magistrate Judge.¹ Dkt. 3.

A petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a state court of a State which contains two or more federal judicial districts may be filed in either the district of confinement or the district of conviction. *See* 28 U.S.C. § 2241(d). The district court where the petition is filed, however, may transfer the petition to the other district in the furtherance of justice. *See id.* Federal courts in California traditionally have chosen to hear petitions challenging a conviction or sentence in the district of conviction. *See Dannenberg v. Ingle*, 831 F. Supp. 767, 767 (N.D. Cal. 1993); *Laue v. Nelson*, 279 F. Supp. 265, 266 (N.D. Cal. 1968). If the petition is directed to the manner in which a sentence is being executed, e.g., if it involves parole or time credits claims, the district of confinement is the preferable forum. *See*

¹ To date, Petitioner has not yet returned the form indicating whether he consents to or declines magistrate judge jurisdiction in this action.

1 Habeas L.R. 2254-3(a); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

2 Here, Petitioner challenges a conviction and sentence incurred in the San Joaquin County
3 Superior Court, which is within the venue of the Eastern District of California. Therefore, the
4 United States District Court for the Eastern District of California has jurisdiction over this matter.

5 Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and in the interest of justice,
6 this action is TRANSFERRED to the United States District Court for the Eastern District of
7 California.² Therefore, the Clerk shall transfer the case forthwith.

8 If Petitioner wishes to further pursue this action, he must either pay the \$ 5.00 filing fee or
9 complete the *in forma pauperis* application required by the United States District Court for the
10 Eastern District of California, and mail it to that district.

11 IT IS SO ORDERED.

12 Dated: March 23, 2018



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14 DONNA M. RYU
15 United States Magistrate Judge
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28 ² Venue transfer is a non-dispositive matter and, thus, it falls within the scope of the
jurisdiction of the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN H MITCHELL,
Plaintiff,

v.

ROBERT FOX,
Defendant.

Case No. [4:18-cv-01246-DMR](#)

CERTIFICATE OF SERVICE

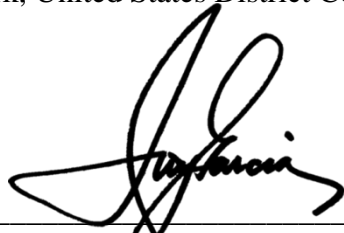
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 23, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John H Mitchell ID: F48239
11-351
P.O. Box 2000
California Medical Facility
Vacaville, CA 95696

Dated: March 23, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
Ivy Lerma Garcia, Deputy Clerk to the
Honorable DONNA M. RYU